UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NELLA MANKO,

                          Plaintiff,   20-CV-9928 (LTS)

          -against-   ORDER

LENOX HILL HOSPITAL, et al.,

                          Defendants.

LAURA TAYLOR SWAIN, Chief United States District Judge:

          Plaintiff filed this *pro se* action on November 24, 2020. On July 2, 2021, the Court

dismissed the complaint under the *Rooker-Feldman* doctrine, under the doctrine of Eleventh

Amendment immunity, and for failure to state a claim on which relief may be granted. Plaintiff

filed a notice of appeal, and by Mandate dated November 10, 2021, the United States Court of

Appeals for the Second Circuit dismissed the appeal. On July 3, 2022, Plaintiff filed a 303-page

Notice of Motion asking the Court to vacate its July 2, 2021, order and judgment, to "restore and

reinstate" the action, and to grant her permission to file an amended complaint that includes

additional attachments including the complaint in another action Plaintiff filed in this court,

Manko v. Lenox Hill Hosp., No. 21-CV-1725 (CM).[1]

          The Court liberally construes this submission as a motion to alter or amend judgment

under Rule 59(e) of the Federal Rules of Civil Procedure, a motion for reconsideration under

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[1] By order dated March 1, 2021, Judge Colleen McMahon dismissed the complaint in No.
21-CV-1725, for Plaintiff's failure to comply with the court's order in *Manko v. Schlesinger*, No.
12-CV-9059 (S.D.N.Y. July 11, 2013), which barred Plaintiff from filing any new action *in forma
pauperis* without first obtaining leave from the court to file. Plaintiff filed a notice of appeal, and
by Mandate dated January 26, 2022, the Court of Appeals for the Second Circuit dismissed the
appeal as frivolous. On June 9, 2022, Judge McMahon denied Plaintiff's motion for
reconsideration.

Local Civil Rule 6.3, and a motion for relief from a judgment or order under Fed. R. Civ. P. 60(b) *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); *see also Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010) (The solicitude afforded to *pro se* litigants takes a variety of forms, including liberal construction of papers, "relaxation of the limitations on the amendment of pleadings," leniency in the enforcement of other procedural rules, and "deliberate, continuing efforts to ensure that a pro se litigant understands what is required of him") (citations omitted). After reviewing the arguments in Plaintiff's submission, the Court denies the motion.

DISCUSSION

A.   Motion to Alter or Amend the Judgment under Fed. R. Civ. P. 59(e)

A party who moves to alter or amend a judgment under Fed. R. Civ. P. 59(e) must demonstrate that the Court overlooked "controlling law or factual matters" that had been previously put before it. *R.F.M.A.S., Inc. v. Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009). "Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court." *Range Road Music, Inc. v. Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000); *see also SimplexGrinnell LP v. Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206 (S.D.N.Y. 2009) ("A motion for reconsideration is not an invitation to parties to 'treat the court's initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court's ruling.'") (internal quotation and citations omitted).

A motion filed under Fed. R. Civ. P. 59(e) "must be filed no later than 28 days after the entry of the judgment." *Id.*

Plaintiff failed to file this motion within 28 days of the entry of judgment. The Court therefore denies Plaintiff's motion under Fed. R. Civ. P. 59(e).

B.   Motion for Reconsideration under Local Civil Rule 6.3

The standards governing Fed. R. Civ. P. 59(e) and Local Civil Rule 6.3 are the same.

R.F.M.A.S., Inc., 640 F. Supp. 2d at 509 (discussion in the context of both Local Civil Rule 6.3

and Fed. R. Civ. P. 59(e)). Thus, a party seeking reconsideration of any order under Local Civil

Rule 6.3 must demonstrate that the Court overlooked "controlling law or factual matters" that

had been previously put before it. *R.F.M.A.S., Inc.*, 640 F. Supp. 2d at 509.

A motion brought under Local Civil Rule 6.3 must be filed within 14 days "after the entry

of the Court's determination of the original motion, or in the case of a court order resulting in

a judgment, within . . . (14) days after the entry of the judgment." *Id.*

Plaintiff failed to file this motion within 14 days of the entry of judgmnet. The Court

therefore denies Plaintiff's motion under Local Civil Rule 6.3.

C.   Motion for Reconsideration under Fed. R. Civ. P. 60(b)

Under Fed. R. Civ. P. 60(b), a party may seek relief from a district court's order or

judgment for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
> evidence that, with reasonable diligence, could not have been discovered in time
> to move for a new trial under Rule 59(b); (3) fraud (whether previously called
> intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing
> party; (4) the judgment is void; (5) the judgment has been satisfied, released, or
> discharged; it is based on an earlier judgment that has been reversed or vacated; or
> applying it prospectively is no longer equitable; or (6) any other reason justifying
> relief.

Fed. R. Civ. P. 60(b). A motion based on reasons (1), (2), or (3) must be filed "no more than one

year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P.

60(c)(1).

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In her motion, Plaintiff restates the allegations in the complaint that Defendants violated her rights in the course of litigating Plaintiff's previous state court actions.[2] The Court has considered Plaintiff's arguments, and even under a liberal interpretation of her motion, Plaintiff has failed to demonstrate that any of the grounds listed in the first five clauses of Fed. R. Civ. P. 60(b) apply. Therefore, the motion under any of these clauses is denied.

To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. "[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)-(5)." *United Airlines, Inc. v. Brien*, 588 F.3d 158, 175 (2d Cir. 2009) (quoting *Smith v. Sec'y of HHS*, 776 F.2d 1330, 1333 (6th Cir. 1985)). A party moving under Rule 60(b)(6) cannot circumvent the one-year limitation applicable to claims under clauses (1)-(3) by invoking the residual clause (6) of Rule 60(b). *Id.* A Rule 60(b)(6) motion must show both that the motion was filed within a "reasonable time" and that "'extraordinary circumstances' [exist] to warrant relief." *Old Republic Ins. Co. v. Pac. Fin. Servs. of America, Inc.*, 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (citation omitted).

Plaintiff has failed to demonstrate that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). *See Ackermann v. United States*, 340 U.S. 193, 199-202 (1950).

CONCLUSION

Plaintiff's motion for reconsideration (ECF 61) is denied.

This action is closed. The Clerk of Court will only accept for filing documents that are directed to the United States Court of Appeals for the Second Circuit. If Plaintiff files other

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[2] The Court notes that Plaintiff filed her motion on July 3, 2022, more than one year after the Court entered judgment on July 2, 2021.

documents that are frivolous or meritless, the Court will direct Plaintiff to show cause why

Plaintiff should not be barred from filing further documents in this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would

not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an

appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: July 5, 2022
         New York, New York

                                            /s/ Laura Taylor Swain
                                            LAURA TAYLOR SWAIN
                                            Chief United States District Judge